

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID W. MANNING and JOHN A. KLINE

Appeal 2006-3130
Application 10/624,360
Technology Center 1700

Decided: November 28, 2006

Before KIMLIN, PAK, and KRATZ, *Administrative Patent Judges*.
KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-8. Claim 1 is illustrative:

1. A battery-powered sewer and drain cleaner, comprising:
a frame;
a rotatable drum mounted on said frame which has a flexible plumber's snake associated therewith;
a DC motor mounted on said frame;
said motor having a driven shaft operatively connected to said drum for rotating the same;

a rechargeable battery mounted on said frame for powering said DC motor;
and a control connected to said DC motor for controlling the operation
thereof.

The Examiner relies upon the following references as evidence of
obviousness:

Babb	US 4,218,802	Aug. 26, 1980
Salecker	US 5,309,595	May 10, 1994
Block	US 6,448,732 B1	Sep. 10, 2002

Appellants' claimed invention is directed to a battery-powered sewer
and drain cleaner comprising a rotatable drum which has a flexible
plumber's snake associated therewith. A DC motor is mounted on the frame
for rotating the drum and is powered by a rechargeable battery that is also
mounted on the frame. The cleaner also has a control for controlling the
operation of the DC motor.

Appealed claims 1-7 stand rejected under 35 U.S.C. § 103 as being
unpatentable over Salecker in view of Block. Claim 8 stands rejected under
35 U.S.C. § 103(a) as being unpatentable over the stated combination of
references further in view of Babb.

We have thoroughly reviewed each of Appellants' arguments for
patentability. However, we are in complete agreement with the Examiner's
reasoned analysis and application of the prior art, as well as his cogent and
thorough disposition of the arguments raised by Appellants. Accordingly,
we will adopt the Examiner's reasoning as our own in sustaining the
rejections of record, and we add the following for emphasis only.

There is no dispute that Salecker, like Appellants, discloses an electrically-powered sewer and drain cleaner comprising the presently claimed frame, rotatable drum mounted on the frame having a flexible plumber's snake associated therewith, an electrical motor for rotating the drum, and a control connected to the motor for controlling the operation thereof. As appreciated by the Examiner, Salecker does not utilize a DC motor powered by a rechargeable battery. Rather, Salecker uses AC (alternating current) to power the motor. However, we fully concur with the Examiner that Block evidences the obviousness of utilizing a rechargeable battery in lieu of AC current to power the motor of Salecker. As explained by the Examiner, Block teaches a cleaner device that may operate in one of two modes, namely, by a rechargeable battery 50 or by AC current from a fixed AC power outlet. In addition, Appellants have not refuted the Examiner's finding that "[i]t is well known in general in the electrical arts to use **either** AC from a fixed power source with a cord/plug **or** DC with a rechargeable battery to power an electric motor for consumer or household products in a variety of arts" (Answer 4). Consequently, we have no doubt that it would have been obvious for one of ordinary skill in the art to use either a rechargeable battery or AC to power the motor in Salecker's cleaning device.

We take note of Appellants' agreement "with the Examiner's assessment of Salecker since Salecker is a typical sewer and drain cleaner" (Br. 4, last paragraph). Appellants assert that they "do not claim to be the

first inventors of a sewer and drain cleaner, but do believe that they are the first persons to provide a battery-powered sewer and drain cleaner” (Br. 4, last sentence). However, it is not the Examiner’s position that the claimed cleaner lacks novelty but, rather, it is the Examiner’s legal conclusion that the claimed battery-powered sewer and drain cleaner would have been obvious to one of ordinary skill in the art within the meaning of § 103. On the other hand, Appellants have not apprised us of any reason why it would have been nonobvious for one of ordinary skill in the art to modify the sewer and drain cleaner of Salecker such that it is powered by a rechargeable battery in order to benefit from the known advantages associated with using a battery, e.g., portability and use when an AC source is not available.

Appellants do not set forth separate, substantive arguments with respect to the particular features of claims 2-4, 6, and 7 but, rather, rely upon the arguments advanced for claim 1. Regarding the arguments for the high-speed, high-torque motor of claim 5, and the claim 8 requirement for a motor having sufficient torque and shaft speed to rotate the drum at approximately 230-350 rpm, we agree with the reasons set forth by the Examiner in the Answer. In essence, we agree with the Examiner that it would have been a matter of obviousness for one of ordinary skill in the art to resort to routine experimentation to determine the optimum rpm for the rotating drum, as well as the motor necessary for operating the drum at such rpm. Appellants have presented no reason why rotating the drum at an rpm within the claimed range would have been unobvious to one of ordinary skill in the art.

Appeal 2006-3130
Application 10/624,360

As a final point, we note that Appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (2004).

AFFIRMED

APJ Initials:

clj

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